

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

CAMERON CHARLES SEAHOLM,
CDC #E-40258,

Plaintiff,

vs.

H. ASBURY; A. MORENO; E.
MARRERO; R. HERNANDEZ,

Defendants.

Civil No. 07-0517 BEN (WMC)

**ORDER DIRECTING U.S.
MARSHAL TO EFFECT SERVICE
OF SUMMONS AND FIRST
AMENDED COMPLAINT
PURSUANT TO FED.R.Civ.P. 4(c)(2)
AND 28 U.S.C. § 1915(d)**

On March 21, 2007, Plaintiff, a state inmate currently incarcerated at the California Substance Abuse Treatment Facility in Corcoran, California and proceeding pro se, filed a civil rights Complaint pursuant to 42 U.S.C. § 1983. Plaintiff later filed a Motion to Proceed *In Forma Pauperis* (“IFP”) [Doc. No. 3]. The Court granted Plaintiff’s Motion to Proceed IFP but sua sponte dismissed his Complaint for failing to state a claim upon which relief could be granted. *See* May 23, 2007 Order at 6-7. Plaintiff was granted permission to file an amended complaint correcting the deficiencies of pleading identified by the Court in its Order. *Id.* On June 6, 2007, Plaintiff filed his First Amended Complaint (“FAC”) [Doc. No. 5].

I. Sua Sponte Screening per 28 U.S.C. § 1915(e)(2) and § 1915A

The Prison Litigation Reform Act (“PLRA”) obligates the Court to review complaints filed by all persons proceeding IFP and by those, like Plaintiff, who are “incarcerated or detained

1 in any facility [and] accused of, sentenced for, or adjudicated delinquent for, violations of
 2 criminal law or the terms or conditions of parole, probation, pretrial release, or diversionary
 3 program,” “as soon as practicable after docketing.” *See* 28 U.S.C. §§ 1915(e)(2) and 1915A(b).
 4 Under these provisions, the Court must sua sponte dismiss any prisoner and all other IFP
 5 complaints, or any portions thereof, which are frivolous, malicious, fail to state a claim, or which
 6 seek damages from defendants who are immune. *See* 28 U.S.C. §§ 1915(e)(2)(B) and 1915A;
 7 *Lopez v. Smith*, 203 F.3d 1122, 1126-27 (9th Cir. 2000) (en banc) (§ 1915(e)(2)); *Resnick v.*
 8 *Hayes*, 213 F.3d 443, 446 (9th Cir. 2000) (§ 1915A); *see also Barren v. Harrington*, 152 F.3d
 9 1193, 1194 (9th Cir. 1998) (discussing § 1915A). “[W]hen determining whether a complaint
 10 states a claim, a court must accept as true all allegations of material fact and must construe those
 11 facts in the light most favorable to the plaintiff.” *Resnick*, 213 F.3d at 447; *Barren*, 152 F.3d at
 12 1194 (noting that § 1915(e)(2) “parallels the language of Federal Rule of Civil Procedure
 13 12(b)(6)”).

14 Here, the Court finds that Plaintiff’s First Amended Complaint survives the sua sponte
 15 screening required by 28 U.S.C. §§ 1915(e)(2) and 1915A(b) to the extent that he may be
 16 seeking injunctive relief in the form of a new parole eligibility review. *See Wilkinson v. Dotson*,
 17 544 U.S. 74, 78 (2005). Accordingly, Plaintiff is entitled to U.S. Marshal service on his behalf.
 18 *Lopez*, 203 F.3d at 1126-27; 28 U.S.C. § 1915(d) (“The officers of the court shall issue and
 19 serve all process, and perform all duties in [IFP] cases.”); FED.R.CIV.P. 4(c)(2) (providing that
 20 “service be effected by a United States marshal, deputy United States marshal, or other officer
 21 specially appointed by the court ... when the plaintiff is authorized to proceed *in forma pauperis*
 22 pursuant to 28 U.S.C. § 1915.”). However, Plaintiff is cautioned that “the sua sponte screening
 23 and dismissal procedure is cumulative of, and not a substitute for, any subsequent Rule 12(b)(6)
 24 motion that [a defendant] may choose to bring.” *Teahan v. Wilhelm*, 481 F.Supp.2d 1115, 1119
 25 (S.D. Cal. 2007).

26 **III. Conclusion and Order**

27 Good cause appearing, **IT IS HEREBY ORDERED** that:
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1 1. The Clerk shall issue a summons for Defendants, provide Plaintiff with a certified
2 copy of both this Order and his First Amended Complaint [Doc. No. 5], and forward them to
3 Plaintiff along with a blank U.S. Marshal Form 285 for each of these Defendants. Plaintiff shall
4 complete the Form 285s and forward them to the United States Marshal within a reasonable
5 amount of time such that the U.S. Marshal can timely serve the Defendants within the 120 days
6 provided by FED.R.CIV.P. 4(m). The U.S. Marshal shall, after receiving Plaintiff's completed
7 Form 285s, serve a copy of the Complaint, its Exhibits and summons upon Defendants as
8 directed by Plaintiff on each U.S. Marshal Form 285. All costs of service shall be advanced by
9 the United States. *See* 28 U.S.C. § 1915(d); FED.R.CIV.P. 4(c)(2).

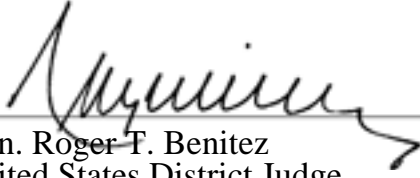
10 2. Defendants are thereafter **ORDERED** to reply to the First Amended Complaint
11 within the time provided by the applicable provisions of Federal Rule of Civil Procedure 12(a).
12 *See* 42 U.S.C. § 1997e(g)(2) (while Defendants may occasionally be permitted to "waive the
13 right to reply to any action brought by a prisoner confined in any jail, prison, or other
14 correctional facility under section 1983," once the Court has conducted its sua sponte screening
15 pursuant to 28 U.S.C. § 1915(e)(2) and § 1915A(b), and thus, has made a preliminary
16 determination based on the face on the pleading alone that Plaintiff has a "reasonable
17 opportunity to prevail on the merits," Defendants are required to respond).

18 3. Plaintiff shall serve upon Defendants or, if appearance has been entered by
19 counsel, upon Defendants' counsel, a copy of every further pleading or other document
20 submitted for consideration of the Court. Plaintiff shall include with the original paper to be
21 filed with the Clerk of the Court a certificate stating the manner in which a true and correct copy
22 of any document was served on Defendants, or counsel for Defendants, and the date of service.

1 Any paper received by the Court which has not been filed with the Clerk or which fails to
2 include a Certificate of Service will be disregarded.

3 **IT IS SO ORDERED.**

4 DATED: June 28, 2007

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6 Hon. Roger T. Benitez
7 United States District Judge
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